

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Jason & Angela Kelly,**  
Petitioners-Appellants,

v.

**Kossuth County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 09-55-0740**  
**Parcel No. 19-17-200-006**

On July 14, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Jason and Angela Kelly, requested a hearing and submitted evidence in support of their petition. They are self-represented. The Board of Review designated Attorney Ann M. Gales as its legal representative. It certified its record and also submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Jason and Angela Kelly, owners of property located at 2505 Plum Creek Road, Algona, Iowa, appeal from the Kossuth County Board of Review decision reassessing their property. According to the property record card, the subject property consists of a two-story brick dwelling with 3468 square feet of living area, a full basement with 1514 square feet of finished area, and a 1014 square-foot attached three-car garage. The dwelling is improved by 96 square-foot and 314 square-foot paver patios, a 385 square-foot deck, and a 127 square-foot open porch. The home has a grade 2+5 quality classification and is in very good condition. The dwelling was built in 2007 and is situated on a 6.20 acre site. The assessor gave the dwelling a discount of 10% for functional obsolescence for being

over-built and an additional 4% discount for other obsolescence. The subject property is also improved by a 2310 square-foot metal building.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$545,009, representing \$46,840 in land value and \$498,169 in improvement value.

The Kellys protested to the Board of Review on the ground that the assessment was not equitable as compared with assessments of other like property in the taxing jurisdiction under Iowa Code section 441.37(1)(a). They claimed that \$413,895 was the actual value and a fair assessment of the property. The Board of Review granted the protest, in part, and reduced the total value to \$526,818, representing \$46,840 in land value and \$479,978 in improvement value.

The Kellys filed their appeal with this Board and urged the same ground for relief. They submitted property record cards for nine properties they considered comparable to the subject property in support of their equity claim. Two of the properties were brick and most were built in the 1980s and 1990s. Considering the assessed value of each dwelling only, excluding land and outbuilding value, the property assessments ranged from \$57.73 to \$122.75 per square foot with a median of \$92.51 per square foot. We note the property at the low end of the range was built in 1901. The Kelly dwelling is assessed at \$124.88 per square foot.

Jason Kelly testified he selected dwellings similar to his dwelling in style, quality, and design, without regard to age. He calculated his dwelling value would be in the range of approximately \$390,000 to \$410,000 using the assessed value per square foot for the two most similar properties. Kelly disputes the quality grade of his dwelling and believes it should be downgraded to 2-10. However, his dwelling is distinguishable from the properties submitted for comparison. It has a larger garage, more basement finish than eight of the properties, a higher grade classification than eight of the comparables, and is the newest dwelling.

The Kellys submitted an appraisal completed by appraiser Tom Geelan, Algona, Iowa, commissioned by a lender for refinancing purposes. The report used a 52-mile radius for locating comparable sales. One property was located in Algona and the others were located in Fort Dodge and Spirit Lake. Three were 2007 sales and one was a 2008 sale. Geelan commented on the energy-efficiency features of the subject property including geo-thermal heating, high "E" glass windows, 6" sidewall insulation, 16" blown-in attic insulation and in-floor basement heating. He also notes high quality features such as upgraded hardwood and tile flooring, granite countertops, oak built-ins, whirlpool tub, and wet bar.

Geelan reports cost of \$50,000 for the site, \$45,000 for the metal outbuilding, \$12,000 for the well, \$7500 for septic system and drainage, and \$495,000 for foundation, exterior and interior dwelling costs. Total costs of \$609,500 were verified by Geelan. He concludes a value of \$510,000 as of 03/28/2008. Since the majority of the comparable sales used were not in the same taxing jurisdiction as the Kelly property, this evidence would more appropriately be used to support a claim of over-assessment under section 441.37(1)(b) rather than the ground of inequity in assessment.

Former Kossuth County Assessor Don Patton testified the properties submitted by the Kellys for comparison are distinguishable from the subject. They have differing age and physical depreciation. He reports the dwellings with greater square feet of living area have been given 10% functional obsolescence for being overbuilt, since these larger homes do not sell as well in his experience. Patton commented specifically on some of the properties identified by the Kellys as most similar to their dwelling. He distinguished the Lipps' dwelling based on it being given 20% for functional obsolescence for structural problems, 10% for functional obsolescence for being overbuilt and 5% physical depreciation based on age. A total of 35% discounting was given as compared to the 14% total for the Kellys based on 10% functional obsolescence, 4% other obsolescence for the unheated garage, and no physical depreciation. He distinguished the Bjustrom house because it has



only partial brick exterior, lacks geothermal heating, has fewer plumbing fixtures, lacks a deck, and lacks paver patios. He distinguishes the Buscher property which has a total of 40% obsolescence, 20% function obsolescence and 20% other obsolescence, and an additional 40% physical depreciation for being built in 1901.

Patton testified that using the *Iowa Real Property Appraisal Manual*, a two-story brick home of the size of the Kelly dwelling has approximately \$24,000 greater value than a similarly sized frame dwelling. In addition, the brick garage and great room add approximately \$7700 more to construction costs according to the manual. Patton explained the additional plumbing fixtures in the Kelly dwelling as compared to the comparables add approximately \$15,000 to value. He testified the reasons for the increase in the Kelly assessment between 2008 and 2009 was due to completion of their construction, county-wide reassessment and land value increases, and use of the newer version of the cost manual combined.

Patton testified he was critical of the Geelan appraisal for using sales outside the county, making no adjustments for the brick exterior, geo-thermal heating, site size, additional plumbing fixtures, and because the sales were dated. He also reported the Kellys constructed the paver patios at a cost of \$12,000 after the Geelan appraisal date. In his opinion, the reason the Board of Review placed the assessment higher than Geelan was the appraisal valued the metal outbuilding at only \$25,000, while the cost manual valued it at \$43,000.

Considering an upward adjustment of approximately \$20,000 to the Geelan appraisal valuation for the metal outbuilding manual costs and the addition of the \$12,000 patios, the value would actually exceed the assessed value. Given differences in age, site size, basement finish, garage size, and other features the comparable properties offered, we find the subject property's assessment not inequitable. Reviewing all the evidence, we find the preponderance of the evidence does not support a conclusion

the Kellys' January 1, 2009, assessed value is inequitable as compared to similar properties in the county.

### ***Conclusion of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

The Kellys claim their property is inequitably assessed. To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa

1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965).

The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

*Id.* at 579-580. The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). For an equity claim under section 441.37(1)(a), the Kellys must present sales in their taxing district which is Kossuth County, the district of the assessor and board of review. *Maytag Co. v. Partridge*, 210 N.W.2d 584, 595 (Iowa 1973). The Kellys did not provide this necessary evidence to show their property is assessed higher proportionately than other like property in the county or to show the assessor failed to apply uniform assessing methods. In this appeal, the preponderance of the evidence does not prove inequity by either of these criteria.

Viewing the evidence as a whole, we determine the Kellys failed to prove, by a preponderance of the evidence, their claim of inequitable assessment as of January 1, 2009. We affirm their property assessment as determined by the Board of Review. The property's assessed value as of January 1, 2009, is \$526,818, representing \$46,840 in land value and \$479,978 in dwelling value.



THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Kossuth County Board of Review is affirmed.

Dated this 26 day of AUG. 2010.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Karen Oberman  
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8.26.2010</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>